

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING**

7:00P.M., May 16, 2017

**George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE**

MINUTES

MEMBERS PRESENT: Chairperson Dafne Carnright, Carma Carpenter, , Cathy Cowin, Bill Doolittle, Karen Eller, Ann Fisher, Terri Hancharick, Brian Hartman, , Sonya Lawrence, Karen McGloughlin, Carrie Melchisky, Mary Ann Mieczkowski, Bill O'Neill, Robert Overmiller, Brenné Shepperson.

OTHERS PRESENT: Guests: Katie Howe (DHSS), Jennifer Garcias (DDDS), Marie Nonnenmacher (DDDS), Brigitte Hancharick, Freda Collins (Child Development Watch), Jazmone Taylor (Parent Information Center), Eileen Scanlon, MOT Academic Coordinator (Wesley College, Occupational Therapy Program)

Staff present: Kathie Cherry, Office Manager; Sybil White, Administrative Coordinator.

MEMBERS ABSENT: Al Cavalier, Nancy Cordrey, Bernie Greenfield, Lisa Gonzon, Emmanuel Jenkins, Chris McIntyre, Beth Mineo, Jennifer Pulcinella, Thomas Keeton, Dana Levy.

Dafne called the meeting to order at 7:05p.m. Dafne announced that Wendy Strauss would not be joining the meeting this evening. Dafne asked for any additions or deletions to the agenda. Being there were no revisions, **a motion** was made to accept the agenda as written and the **motion was approved**. A **motion** was made to approve the April minutes. The **motion was approved**.

A **motion** was made to accept the April financial report. The **motion was approved**.

PUBLIC COMMENT

Eileen Scanlon from Wesley Colleges Master of Occupational Therapy program brought information about a new pro bono clinic being offered by the program. She gave handouts with criteria as well as locations and types of services provided.

GUEST SPEAKER

Mary Ann gave the update on the State Systemic Improvement Plan (SSIP) in place of Barbara Mazza who was originally scheduled to present. The power point of the presentation is attached for your reference.

DOE REPORT

Mary Ann delivered the DOE report which is outlined below:

Best Practices in Evaluations and Developing Evaluation Summary Reports

The Exceptional Children Resources Workgroup is providing technical assistance to Districts and Charter Schools statewide on best practices in evaluations and developing evaluation summary reports. These presentations are being held in each county. The targeted audience includes School Psychologists, Special Education Coordinators, Educational Diagnosticians, Special Education Directors, and Charter Heads. Presentations were held in Kent county (4/12/17) and New Castle County (4/27/17). Upcoming presentations are scheduled for Charter Schools (5/15/17) and Sussex County (5/18/17).

IDEA Delaware Early Literacy Initiative

On May 10 – 12, 2017, K-3 teachers at Rehoboth Elementary School and Shields Elementary School in the Cape Henlopen School District participated in Day 1 of the IDEA Delaware Early Literacy Institute. Over 40 teachers received professional learning in the essential elements of Multi-Tiered Systems of Support for literacy, Data-Based Individualization (DBI) of instruction, and evidenced-based literacy instruction. Participants identified action steps they planned to take as a result of the professional learning which included enhancing and providing more rigorous vocabulary instruction, looking in more depth at assessment and progress monitoring data, and unpacking higher order comprehension questions.

Significant Disproportionality

In December 2016, the Office of Special Education Programs (OSEP) finalized new regulations on significant disproportionality. These regulations enforce the use of IDEA funds for mandatory Comprehensive Coordinated Early Intervening Services (CCEIS), which local education agencies (LEAs) provide upon identification of significant disproportionality, and distinguish use of funds for CCEIS from the use of IDEA funds for voluntary Coordinated Early Intervening Services. The final stakeholder group within Delaware met on May 11, 2017 to provide final input to DDOE. We will be analyzing the input and making final decisions this summer to begin the communication and TA that LEAs will need in order to be in compliance with this regulation.

CHAIR/DIRECTORS REPORT

Dafne announced absent members. She announced that the Special Education Strategic Plan was shared and we need to gather comments. Dafne asked if a council wanted to submit a formal comment hearing no feedback Sybil suggested that staff send an email so that everyone can send comments individually. Council was reminded that the turnaround would be very quick as the comment period is only 30 days. Dafne asked members to respond to staff email for comments. Dafne shared that Infant and Early Childhood Committee is in talks with EIEIO about a merger with Council. It was announced that additional information would be forthcoming. Dafne shared that the Significant Disproportionality ad hoc committee met twice to gather comments. Those comments will be shared during the Children and Youth Committee report. Dafne asked committee chairs to have their annual report submissions ready to turn in on the evening of our June meeting. She reminded members that it is important to get this information to staff in a timely manner. Since both the chair and co-chair of the membership committee were absent Dafne shared that a formal letter has been sent to the Governor to request the termination of Lavina Smith's appointment to council due to her inability to honor the time commitment.

COMMITTEE REPORTS

ADULT TRANSITION SERVICES

Marie Nonnenmacher from the Division of Developmental Disabilities Services (DDDS) spoke to the group by phone to give an update on the life span waiver. The waiver will be implemented on July 1st. DDDS has chosen an agency to manage the care management, moving from contractual family support specialist positions to contracting with Columbus Organization who will manage the family support specialist who are in the process of being hired. Columbus has a wealth of positive experience in targeted case management. Questions were asked about budget cuts and Marie shared that the Department is working to make sure budget cuts will not have a negative impact. Brian shared that they also discussed the age category of individuals eligible for the waiver. A few years ago the age was raised to 12, and though they would like to increase that age the plan right now is for it to remain.

CHILDREN AND YOUTH

Katie Howe and Jennifer Garcias from DDDS spoke to the committee about the pathways to employment program. This is a program designed to help teens and young adults with disabilities get connected to work with supported services tailored to individual needs. There are currently 362 enrollees and 58 of those are working through the program. Karen passed out pamphlets about the program. Karen shared that on May 23rd there is an event for schools and families and

asked Kathie to share with Council. Last month the committee made a motion to form a committee to gather comments on the Significant Disproportionality report. Karen asked Bill Doolittle to share the comments. The group agreed on the number of years for districts to react. The group decided on cell size and N numbers on a cell size of 15 and an N number of 10 or less. The group is requesting some data to help them better understand this area better. They fear special education students will be excluded from the analyses based on the suggested cell size and N number. Discussion regarding this indicator ensued. Bill then shared that there was some discussion in the DOE workgroup about whether there should be a single ratio or various ratios based on different disability categories, with this in mind the committee offered a single number as well as numbers based on different disability categories. Regarding discipline indicators, the committee felt it was important to disincentivize long periods of discipline and absenteeism so they submitted ratios that reflected this information. The committee made a **motion** to submit recommendations regarding the Significant Disproportionality report to the Department of Education. Brian questioned if part of the recommendation was to differentiate between the students disability categories to determine disproportionality. Also are they recommending that the disability category be material to the formulas in determining disproportionality? Bill answered by saying that they are not, but the threshold ratio could be different for different ratios. There are other areas of IDEA (Individuals with Disabilities Education Act) where the data is analyzed by category. He also pointed out that it was important to differentiate that this disproportionality was specifically designed to analyze disproportionality between racial and ethnic groups. **The motion was approved.**

INFANT AND EARLY CHILDHOOD

Mary Moor presented information about mental health resources for early childhood to the committee. She shared information about Project Launch and resources for districts to access child mental health. Mary also shared community resources that parents can access as well as resources for child care centers with the hopes of decreasing the number of children being removed from these setting.

POLICY AND LAW

The committee recommends taking action on items 6-11 of the May Policy and Law memo. Also recommending take action with item 5 with the addition of the following comment: the regulation adopts a model which authorized discipline for off campus activities even if the student has only been charged with delinquency with no adjudication of such. This approach is consistent with the presumption of innocence inherent in American jurisprudence. This approach also undermines Family Court due process since the student has the constitutional right to remain silent when questioned about an incident but may feel compelled to waive this right to present a defense to school disciplinary action.

A second item of recommendation, Delaware Department of Health and Social Services (DHSS), submitted an amended State Transition Plan to CMS (Centers for Medicaid and Medicare Services) on April 21, 2017. The plan provides the results of the state review of 507 setting in which HCBS (home and community based services) are provided, including adult day services, assisted living, day habilitation, and pre vocational services. Of the 507 setting, the state identified only one facility it characterized as qualifying for heightened scrutiny under CMS standards. The Committee recommends that the council support a DLP (Disabilities Law Program) letter to CMS which recommends that CMS solicit underlying data supporting the state findings and closely review this aspect of the plan.

A **motion** was made and **approved** to accept the recommendations of the committee as submitted.

Commentary from the legal memorandum was as follows:

6. House Bill No. 145 (ABLE Act Revision)

This legislation was introduced on April 25, 2017. As of May 8, it had been released by the House Health & Human Development Committee and placed on the Ready List for action by the full House.

As background, Congress enacted enabling legislation authorizing Achieving a Better Life Experience (ABLE) savings accounts in 2015. The accounts permit individuals with disabilities to accumulate funds to be applied to qualified disability expenses without jeopardizing eligibility for means-based federal programs such as SSI and Medicaid. Delaware enacted implementing legislation (H.B. No. 60) a few months later.

Upon the death of the ABLE account holder, the federal model allows states to recover the costs of Medicaid expenditures on the deceased's behalf made since the inception of the account. See attached excerpt from proposed federal regulation. This "claw back" provision is characterized as a "significant drawback for many families" since it deters family contributions to an ABLE account. Recognizing the "downsides" to the "claw back" model, some states have opted to include an exemption from "claw back" recovery in their enabling legislation. For example, Pennsylvania included the following exemption in its 2016 enabling law (S.B. No. 879):

(d) Death of beneficiary. – Unless prohibited by Federal law, upon the death of a designated beneficiary, proceeds from an account may be transferred to the estate of a designated beneficiary, or to an account of another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary. An agency or instrumentality of the Commonwealth

may not seek payment under section 529A (f) of the Internal Revenue Code from the account or its proceeds for benefits provided to a designated beneficiary.

Delaware House Bill No. 145 adopts the Pennsylvania exemption almost verbatim. Compare lines 6-10. Therefore, it removes a disincentive for contributions to an ABLE account. It is also consistent with Delaware public policy in related contexts. For example, Delaware law authorizes the operation of the Delaware CarePlan Trust, a non-profit group trust for individuals with disabilities. See 12 Del.C. Ch. 40. That law requires the disregard of the participant's interest in the trust "in assessing financial eligibility and liability under any program of government benefits or assistance." See 12 Del.C. §4009. Moreover, the Delaware Employment First Act [19 Del.C. §§740-747) encourages remunerative employment by individuals with disabilities. Elimination of the "claw back" from ABLE accounts facilitates savings of earned income and accumulation of a "nest egg" in the safe harbor of an ABLE account.

The Council may wish to consider an endorsement.

7. House Bill No. 142 (School Resource Officer Training)

This legislation was introduced on April 25, 2017. As of May 8, 2017, it awaited action by the House Education Committee.

As background, the role of school resource officers (SROs) in schools has generated considerable debate in recent years. Student advocates posit that the routine presence of law enforcement officers in schools contributes to the school-to-prison pipeline, escalates minor behaviors into crimes, and perpetuates discriminatory patterns of punishment. SRO proponents counter that the presence of SROs fosters safer environments and develops personal trust between students and law enforcement representatives.

To mitigate objections to the presence of SROs in schools, some states require specific training which includes evaluation of risk of harm, de-escalation techniques, and debriefing strategies.

H.B. No. 142 is intended to promote the training of SROs active in Delaware public schools. It would require participation of SROs in annual training with emphasis on interventions with students with disabilities (lines 10-25 and 35-36). It would also require the SRO to meet with building staff at the outset of the school year to become familiar with expected disability-related behaviors and responses (lines 26-28). Each district or charter school would be expected to have a memorandum of agreement (MOA), based on a DOE template, with each agency providing the SROs (lines 32-34). The legislation would be effective on July 1, 2018 (line 50). The bill contemplates implementation through existing funds (line 44) but the bill is earmarked with an incomplete fiscal note.

Since the training should reduce prospects for uneven or inappropriate responses to student behavior, Council may wish to consider endorsement subject to addressing some technical concerns.

First, the scope of individuals subject to the training standards is not clear. On the one hand, it would cover anyone defined in §4112F(a)(4). See lines 4-6). However, that section includes not only an SRO but also “an employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility”. There are many YRS employees who would be expected to “assist with or independently intervene with students with disabilities” (lines 6-7). Moreover, while the bill imposes obligations on districts and charter schools (lines 10-11, 19-22, 23-25, 32-36), DOC and YRS personnel are not employees and contractors of districts and charter schools.

Second, there is some “tension” between characterizing the education as “awareness training” (lines 11, 13, and 17) and the expectation that the education include some meaningful, hands-on training which is not merely “fluff”. Consistent with the attached descriptions of training offered by the National Association of School Resource Officers and the N.J. Safe Schools Resource Officer/School Liaison Training, there are readily available, robust curricula for SRO training. The references to “awareness” training implies that the education will be diluted and anemic.

A courtesy copy of any comments could be shared with the Attorney General and the ACLU.

8. House Bill No. 120 (Health Insurer Cancer Treatment Coverage)

This legislation was introduced on March 30, 2017. As of May 8, it had been released from the House Economic/Banking/Insurance/Commerce Committee and placed on the Ready List. It is earmarked with an incomplete fiscal note.

For background it is estimated that 5,600 Delawareans will be diagnosed with cancer in 2017. Delaware women have the ninth-highest cancer death rate in the country. Unfortunately, some health insurers restrict access to the most effective treatments approved by the FDA. Instead, insurers may require patients to demonstrate failure to respond to a less efficacious drug regimen as a precondition of qualifying for cutting-edge treatments.

The legislation is based on legislation adopted in Georgia which was inspired by former President Jimmy Carter. President Carter was rendered cancer-free after undergoing immunotherapy which shrunk his metastatic melanoma tumors. Immunotherapy is considered one of the most promising approaches to cancer since it activates a patient’s immune system to

fight cancer instead of attempting to directly destroy cancer cells through chemotherapy. Since enactment in Georgia, the summary notes that similar legislation has been introduced in Maryland and Connecticut.

H.B. No. 120 would bar health insurers regulated by the Delaware Insurance Commissioner which cover treatment of stage 4 advanced metastatic cancer from limiting or excluding access to FDA-approved drugs. Patients would not be required to prove failure of other drugs or demonstrate a history of failed treatment using other drugs. The bill would affect both individual and group health insurance policies. It would be apply to policies issued, delivered, renewed, modified, altered, or amended on or after September 1, 2017.

Given the advantages of prompt access to effective cancer drugs, Council may wish to consider endorsement.

9. House Bill No. 79 (Motor Voter Program)

This legislation was introduced on March 16, 2017. As of May 8, it awaited action by the House Administration Committee.

A brief summary of the bill is included in the attached March 27 Delaware House Democrats e-newsletter. The legislation is part of package of bills intended to encourage participation in the electoral process.

Consistent with the synopsis, current Delaware law is interpreted as allowing Delawareans applying for, renewing, or replacing a driver's license or identification card to register to vote or update voter registration. H.B. No. 79 would presumptively consider applicants for such DMV services to be registering to vote or updating their voter registration. Applicants would have to affirmatively "opt out" to obviate sharing of DMV information with the Department of Elections (lines 51-52 and 61-64). There are some exceptions. For example, the DMV would not forward information to the Department of Elections for non-citizens (lines 67-68). Both the DMV and Department of Election could issue regulations to facilitate implementation of the program (lines 87-88). Six states and the District of Columbia have enacted similar "opt out" approaches to motor-voter systems. The intent of the legislation is to promote a higher proportion of registered voters.

H.B. No. 79 also amends the statutory authorization to register to vote through some State agencies, including DSS and DVR. Consistent with the synopsis, amendments are intended to conform to the Delaware Legislative Drafting Manual "with no intent to change the substance of these sections". The bill also updates some outdated references. For example, line 106

substitutes a reference to the Division of Social Services for the former Division of Economic Services.

Since the legislation is intended to facilitate voter registration and update references to State agencies serving persons with disabilities, Council may wish to consider endorsement. Parenthetically, the Council may wish to recommend that the sponsors consider an amendment. Under current law, authorized State agencies can only provide voter registration services to their employees and agency clients (individuals served by the agency) (lines 102, 112, and 122). It would facilitate voter registration if authorized State agencies were not limited to offering registration to only agency clients. For example, if a couple appears at a State agency seeking services only for one of the spouses, the agency could ostensibly register only the individual applying for services. This is arguably unduly brittle. Consistent with (42 U.S.C. 1973gg-5) of the National Voter Registration Act of 1993, states are not limited to authorizing state agencies to offer voter registration services only to agency clients.

A courtesy copy of comments could be shared with the State Election Commissioner, the League of Women Voters, and the ACLU.

10. House Bill No. 140 (Infants with Prenatal Substance Exposure)

This legislation was introduced on April 13, 2017. As of May 8, it awaited action by the House Judiciary Committee. It is earmarked with an incomplete fiscal note.

Consistent with the synopsis, the bill is intended to implement the federal Child Abuse Prevention and Treatment Act (CAPTA) requirements for states to adopt standards to address the needs of infants born with and identified as being affected by substance abuse, withdrawal symptoms, or Fetal Alcohol Spectrum Disorder. Additional background is provided in the attached excerpt from the House Minority Caucus e-newsletter.

As background, approximately 3% of babies born in Delaware qualify for a diagnosis of neonatal abstinence syndrome (NAS) in which the infant undergoes opiate withdrawal. That percentage has been growing in recent years. DFS substantiates abuse in approximately 10% (44/448) of cases of suspected neglect or abuse reported to it among babies born with drugs or alcohol in their system. Medical professionals prefer to place pregnant women with addictions on methadone resulting in only short-term effects on babies treated for withdrawal upon birth.

House Bill No. 140 would require health care providers to report substance exposed infants to the Division of Family Services (lines 39-40). Upon receipt of a report, DFS would determine if the case requires an investigation or family assessment, develop a plan of safe care, provide copies of the plan of safe care to providers and the family or caretaker, and implement and monitor the plan of safe care (lines 55-62).

DFS is authorized to contract for remedial services (lines 63 and 67). This is an important feature since, historically, the lack of substance abuse resources has posed a significant barrier to expectant and new mothers. This was highlighted in the attached article, “More treatment key for addicted moms”, Delaware News Journal (March 4, 2016):

Holly Rybinski, of Newport, said she had to go to jail in order to get the drug treatment she needed. That was almost two years ago. She had stayed clean for five years, but while she was pregnant with his child, her partner overdosed and died. Consumed with grief, Rybinski turned to heroin and cocaine during the last five months of her pregnancy. After she gave birth to the son James April 8, 2014, at Christiana Care’s Wilmington Hospital, she was ready to be clean. She said the Division of Family Services told her that they had to take custody of him since James tested positive for drugs, she wasn’t in a treatment program and Rybinski had a record. They told her she had 90 days to find employment, treatment and stable housing and then they could discuss putting him back in her care. That request was easier said than done. ...”I tried five different times to get into treatment,” Rybinski said. “It was one obstacle after the other.” As the number of pregnant and addicted mothers grows, the need for treatment is even more critical. Community members, families and those now in recovery, like Rybinski, have long lamented Delaware’s lack of residential treatment options. Many people have to wait days and even weeks to get a bed. ...Currently, there is one state-run treatment program for expectant or new mothers recovering from addiction in Delaware, but it is only for women who are incarcerated and it is in Newark. ...Brandywine Counseling ran a program for expecting moms wrestling with addiction, called Lighthouse, downstate in Ellendale, but is closed in September due to budget cuts and staffing shortages. ...(I)t was extremely successful. Nearly 100 percent of women were able to give birth to babies free of drugs.

The lack of ready access to substance abuse services is also highlighted in pending legislation, H.B. No. 100.

The Committee has the following observations.

First, the legislation represents a major improvement over a predecessor bill (H.B. No. 268) introduced in 2016. For example, that bill required development of a DFS plan of safe care for any “medically fragile child” (lines 42-44 and 126-127) and did not authorize sharing of the plan with the family (line 48).

Second, the bill could be improved by supplementing the “plan of safe care” provisions (lines 24-28, 59, and 71) as follows:

- A. Ensure parental input and collaboration in development of the plan;
- B. Ensure that the plan specifically identifies appropriate support services. For example, consider the following amendment:

The plan shall identify all material impediments to family preservation and the itemized, available resources specifically offered to the parent to overcome each impediment including, if relevant:

- a. mental health treatment;
- b. substance abuse treatment;
- c. safe housing; and
- d. any public assistance program operated or administered by a State agency.

Third, the bill could be improved by explicitly requiring referrals to the DHSS early intervention program for infants who may qualify as eligible under 16 Del.C. §212(3) (which includes being diagnosed with a condition which has a high probability of resulting in developmental delay). The Infants and Toddlers Early Intervention program implements Part C of the Individuals with Disabilities Education Act and is federally subsidized. This free program is the most comprehensive resource for infants with disabilities in the State. See 16 Del.C. §§210-218. This is the approach adopted by analogous health screening laws. See, e.g., 16 Del.C. §806A.

The Council may wish to consider endorsement subject to consideration of the above amendments.

11. S.B. No. 38 (Realty Tax Exemptions for Individuals with a Disability)

This legislation was introduced on March 21, 2017. As of May 8, it had been released by the Senate Judicial and Community Affairs Committee and placed on the Ready List for action by the full Senate.

As background, New Castle, Kent, and Sussex Counties currently have ordinances which provide partial exemptions from real property taxes for homeowners with a disability. In New Castle and Kent Counties, “disability” is defined as equivalent to the standard in Social Security law. In Sussex County, “disability” is defined as being “physically prevented from pursuing any remunerative occupation”. Income limits in all three counties generally disregard Social Security benefits. The domicile and residency requirements vary by county. The relevant ordinances for the three counties are attached for facilitated reference.

The New Castle County ordinances authorize a \$32,000 exemption from the assessed value of a principal residence for qualifying homeowners with income at or below \$50,000. An additional \$2,000 exemption applies to such homeowners based on loss of use of two limbs. If the disability is connected to military service, an additional \$5,000 exemption applies. See §§14.06.303 and 14.06.304.

The Kent County ordinances authorize a \$25,000 exemption from the assessed value of a residence owned by qualifying homeowners under certain income limits (\$16,000 for individual and \$22,000 for couple plus \$3,100 for each dependent residing in residence). If the disability is connected to military service, an additional \$5,000 exemption applies. See §191-9.

The Sussex County ordinances authorize a \$12,500 exemption from the assessed value of a residence owned by qualifying homeowners under certain income limits (\$4,500 for individual and \$6,500 for couple). I did not identify any additional exemption for service-connected disabilities.

Senate Bill No. 38 would essentially codify in State law the above county exemptions for individuals with disabilities (including the service-connected supplements). Counties could increase or expand the exemptions, but not eliminate or reduce them (lines 25-26). The synopsis observes that Delaware may be the only state “that is silent at the state level with regard to exemptions for service-related disabilities”.

The Committee has the following observations.

The disability-based exemptions are relatively modest. Indeed, the Sussex County standards are manifestly low (e.g. authorizing only a \$12,500 exemption of assessed value for an individual with countable income of \$4,500 or below). With inflation and predictable increases in real estate values, setting the existing standards as a minimum should not prove burdensome for counties. Counties could also diminish the impact of the exemptions by increasing assessed values either on a county-wide basis or as properties change hands.

Given the modest exemptions authorized by existing law, and their beneficial impact on persons with disabilities, the Council may wish to consider endorsement.

MEMBERSHIP

The committee had nothing to report.

PERSONNEL COMMITTEE

The committee had nothing to report.

AD HOC COMMITTEES

OUTSIDE COMMITTEE UPDATES

Bill said he noticed HB 175 has been filed and the language referencing SLPA (Speech Language Pathology Assistants) has been eliminated from the legislation. He suggested that Council look at this and expedite a response. He suggested turning it over to Brian for analyses. Dafne asked for any thoughts on the matter or other recommendations. Brian replied that typical protocol is that the three Council, GACEC, SCPD and DD Council submit six pieces of legislation to him for analyses each month, otherwise he would be inundated with analysis. He suggested that HB 175 could be one of the items submitted by GACEC.

Dafne announced visitors for the evening and advised members that copies of all letters and responses are available for viewing at the back of the room.

A **motion** was made **to adjourn** the meeting. The **motion** was **approved**. The meeting was adjourned at 9:02 p.m.